HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

WP No. 1484/2003(S/S)
With 1485/2003(S/S)
Do 1486/2003(S/S)
Do No. 1396/2003(S/S)

Rajeeveer Singh & others.
Vs
General Manager and others.

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 21.03.2006

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1484 of 2003 (SS)

1. Rajveer Singh s/o Sri Ram Chandra Singh
2. Radhey Lal s/o Sri Sagar Singh
3. Vijay Pal Singh s/o Sri Ram Gopal
   All residents of R.P.N. Sugar Mill, Nadehi
   District Udham Singh Nagar ..... Petitioners

Versus

1. General manager, Kisan Sahkari Chinimil Ltd; Rajpur, Puranpur Nadehi District Udham Singh Nagar
2. The Administrator/District Magistrate Udham Singh Nagar. ..... Respondents

Writ Petition No. 1396 of 2003 (SS)

1. Nav Bahar Singh s/o Sri Tungal Singh
2. Jag Lal Yadav s/o Sri Shiv Nath
3. Bhupendra Singh s/o Sri Syambar Singh ... Petitioners

Versus

1. State of Uttaranchal
2. Kisan Sehkari Chini Mill Ltd; Rajpur Pooranpur, Nadehi, District Udham Singh Nagar
3. General Manager, Kisan Sahkari Chini Mill Ltd; Rajpur, Pooranpur, Nadehi, District Udham Singh Nagar ..... Respondents

Writ Petition No. 1484of 2003 (SS)

Yogendra Singh s/o Sri Sharjeet Singh
Rajpur, Pooranpur Chini Mills, District
Udham Singh Nagar ..... Petitioner

Versus

1. General Manager, Kisan Sahkari Chin Mills Rajpur, Puranpur, Nadehi District Udham Singh Nagar

2. The Administrator/ District Magistrate, Udham Singh Nagar ..... Respondents

Writ Petition No. 1486 of 2003 (SS)

Laxman Singh s/o Sri Mohan Singh Bisht
Nadehi Sugar Factory, Jaspur,
District Udham Singh Nagar ..... Petitioner

Versus

1. General Manager, Kisan Sahkari Chin Mills Rajpur, Puranpur, Nadehi District Udham Singh Nagar
2. The Administrator/ District Magistrate, Udham Singh Nagar ..... Respondents

Sri S.K. Mandal, Advocate & Sri Tumul Nainwal for the petitioners
Sri C.K. Sharma & Standing Counsel for the respondents.

Dated: 21.3.2006

Hon'ble Rajesh Tandon, J.

Heard Sri S.K. Mandal and Sri Tumul Nainwal counsel for the petitioners and Sri C.K. Sharma & Standing Counsel for the respondents.

The facts and law involves in all the above writ petitions are similar, hence all the writ petitions are being disposed of together.

By the present writ petitions, the petitioners have prayed for a writ of mandamus directing the respondents to regularize the service of the petitioners on the posts which they are holding at present.

Briefly stated according to the petitioners they were employed in Kisan Sahkari Chini Mill, Rajpur, Puranpur, Nadehi District Udham Singh Nagar on daily wages on different

alleged that they are working against the substantive posts. They have submitted they made several representations to the authorities of the Sugar Mill but till today they have not been regularized.

The petitioners have also relied upon the judgment of Apex Court in Writ Petition (Civil) No. 140 of 1989 Raj Narain vs. State of U.P. The Apex Court has observed as under:

"We have carefully perused the proposed scheme in regard to work charged employees and we felt that clause 'D' which talks of regularization as per vacancies arising in regular posts on the establishment, a modification in necessary, it that, there should be a review of the cadre strength from year to year and based on the past requirement and continuity of work charges employees the cadre strength should be increased by a certain percentage of the work charged employees working over a period of time that may be fixed by the Government so that the pace of regularization ia accelerated and in not the same as obtaining in the past, For example, if 100 work charged employees have been required throughout a period of time it could reasonably be estimated that even if shedding takes place a certain percentage of those employees would certainly be retained and a part of them could be absorbed by increasing the cadre strength to that extent. An exercise of review in the cadre strength from year to

year, therefore, becomes necessary because while of the one side the financial difficulties of the state has to be kept in view, on the side the welfare of the workman who have served the State on different projects has to be balanced. Concern is also to be shown for thosel who have worked for a number of years and have become ineligible for any other employment anywhere, be that the private sector or the public sector. Therefore, a balance has to be struck between the two competing interests and that can be struck by a periodical revision of the cadre strength from year to year. We must also impression the State Government that if work charged employees have been on the establishment for long period that State should be liberal in the matter of revision of the cadre strength so that the benefit of regularization is available to a reasonably good number of work charged employees who have been associated with State Department for long periods."

The petitioners have also placed reliance on the judgment of Prayag Narain and others vs. State of U.P. and others (1998) 3 UPLBEC 21251. In this case also the petitioners were employed in Sugar Mill. All of them were initially engaged on daily wages and later on engaged on master roll therefore, they had prayed that the respondents be directed to pay equal pay for equal work.

The petitioners have referred the judgment of Apex Court in the case State of Haryana and others vs. Piara Singh and others AIR 1992 SC 2130. It has been held as under:

"So far as the work charged employees and casual labour are concerned, the effort must be to regularise them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to availability of work. If a casual labourer is continued for a fairly long spell-say two or three years- a presumption may arise that there is regular need for his services. In such situation it becomes obligatory for the concerned authority to examine the feasibility of his regularization. While doing so, the authorities ought to adopt a positive approach coupled with an empathy for the person. As has been repeatedly stressed by this Court security of tenure is necessary for an employee to give his best to the job"

The petitioners are working with the respondent Department since long and they are entitled to be regularised in view of the judgment of Apex Court in the case of State of Haryana vs. Piara Singh (Supra) as under:

If for any reason, an ad hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified

according to the Rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State.

So far as the work charged employees and casual labour are concerned, the efforts must be to regularize them as far as possible and as early as possible subject to their fulfilling the qualifications, if any, prescribed for the post and subject also to availability of work. If a casual labourer is continued for a fairly long spell say two or three years a presumption may arise that there is regular need for his services. In such a situation, it becomes obligatory for the authority concerned to examine the feasibility of his regularization. . While doing so, the authorities ought to adopt a positive approach coupled with an empathy for the person. As has been repeatedly stressed by this Court, security of tenure is necessary for an employee to give his best to the job. In this behalf, we do commend the orders of the government of Haryana (contained in its letter dated 6.4.1990 referred to herein before) both in relation to work charge employees as well as casual labour.

The petitioners have stated that they have filled their representation for their regularization but the same has not been considered by the respondents.

Suffice it to observe that without entering into the merits of the eligibility considerations, it will be open for the respondents to decide the case of the petitioners with regard to their regularization after considering their suitability, merit and eligibility.

In view of above, liberty is given to the petitioners to prefer a fresh representation to the respondents within 15 days after obtaining certified copy of this order. The respondents are directed to decide the representation within three months thereafter.

Accordingly, all the writ petitions are disposed of. No order as to costs.

Dated: 21.3.2006 **Rajesh Tandon, J.**

*Dhyani